

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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In the Matter of:

Amendment of Part 90 of the
Commission's Rules to Facilitate
Future Developments of SMR
Systems in the 800 MHz Frequency
Band

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PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF POWERSPECTRUM, INC.

PowerSpectrum, Inc. ("PSI"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communication ("FCC" or "Commission") hereby submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") adopted in the above captioned proceeding designed to promote the continued growth of the 800 MHz Specialized Mobile Radio ("SMR") industry.^{1/}

I. INTRODUCTION

PSI is a subsidiary of Geotek Industries, Inc. ("Geotek"), a U.S. public company which is involved in various segments of the telecommunications industry. PSI has entered into a joint venture with RAFAEL, the technology development arm of the Department of Defense of the State of Israel. Through this joint venture, PSI has obtained exclusive worldwide rights to commercial use of RAFAEL's advanced radio

^{1/} Notice of Proposed Rule Making, PR Docket No. 93-144, FCC 93-257, released June 9, 1993.

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technologies. PSI is currently working toward commercial implementation of one of these technologies, frequency hopping multiple access ("FHMA"), in the United States.

In support of these technology development activities, PSI has acquired many 900 MHz SMR systems throughout the United States, either directly, through subsidiaries, or through exclusive management and option agreements. PSI has obtained a waiver of the Commission's regulations which permits it to construct these 900 MHz channels with FHMA technology over a multi-year period.^{2/} PSI intends, therefore, to be one of the nation's leading providers of SMR services, with systems in over thirty of the top fifty markets. Because it will be a major provider of SMR services, PSI has a significant interest in any Commission proceeding which affects the SMR industry. PSI is, therefore, pleased to have this opportunity to submit the following Comments.

II. COMMENTS

A. The Commission Should Strive for Similarity in the Treatment of 800 MHz and 900 MHz SMR Systems

This proceeding is designed to permit the greater use of wide area and advanced SMR systems at 800 MHz. Based upon those objectives, the Commission would introduce licensing methods that represent a radical departure from the method by which SMR systems at 800 MHz have been licensed in the past. Most notably, the FCC would permit licensees to reuse currently authorized frequency assignments throughout a predefined geographic area. It would also permit licensees to request the use of up to 42

^{2/} In the Matter of PowerSpectrum, Inc., DA 93-770, Released June 28, 1993.

vacant SMR channels and employ those channels throughout an area, with an option to construct those facilities over a five year period.

PSI agrees that the current regulatory structure impedes the growth of SMRs. The FCC's rules do not envision wide area SMR systems. In its Rule Waiver Request, PSI pointed out that typical SMR customers require service over an area that is not necessarily defined by a single site coverage area. PSI has consistently urged that the Commission permit SMRs to serve broad geographic areas. Accordingly, PSI supports the Commission's efforts to amend its regulations to be more responsive to consumer demands.

Nevertheless, PSI is disappointed that there does not appear to be consistency between the Commission's proposal in this proceeding and the current rule making designed to license the remaining 900 MHz SMR channels.^{3/} The Commission has consistently recognized that for many reasons, 900 MHz SMR systems have been less commercially successful than their 800 MHz counterparts.^{4/} The current proceeding will only exacerbate those inequalities. For example, in the 900 MHz Phase II Proceeding, the Commission proposes to permit the licensing of 20 12.5 kHz channels for regional SMR systems. In this proceeding, the Commission would permit the licensing of 25 kHz

^{3/} See First Report and Order and Further Notice of Proposed Rule Making, FCC No. 93-34, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993) ("900 MHz Phase II Proceeding")

^{4/} See Report and Order, PR Docket No. 92-17, 7 FCC Rcd. 4914: "The Constraints of our licensing policies have placed 900 SMR licensees at a competitive disadvantage to at least 800 MHz SMR licensees in designing and marketing their systems."

SMR channels in blocks of 42. Accordingly, under the instant proposal, 800 MHz wide area system licensees would be allowed to employ over eight times as much spectrum as a 900 MHz counterpart. Similarly, in the instant proceeding, SMRs would be permitted to reuse their authorized channels at locations throughout a geographic area without regard to the regulations that otherwise prohibit the authorization of more than one

the administrative attractiveness of promoting the resolution of mutually exclusive applications, it fears that formalization of this mechanism will interfere with natural market conditions. PSI does not doubt that when it is financially attractive, based upon system revenues and other factors, there will be aggregation of SMR channels in markets where it has not yet occurred. However, this activity should be market driven, and not encouraged by the Commission.

Moreover, the potential adoption of legislation which would permit the Commission to employ auctions to resolve mutually exclusive applications will further encourage the displacement of small operators by those with greater financial resources.^{6/} If two applications are mutually exclusive, and the Commission is required to conduct an auction to choose between them, the applicant with the greater financial resources will always prevail. The Commission must ensure that each entity in fact has an opportunity to secure the use of the channels over the contested area.

If the Commission grants licenses of currently unused SMR channels, it proposes to allow a 60 day negotiation period prior to conducting a lottery between applicants. This mechanism will also create unnatural market conditions by encouraging the submission of speculative applications by entities interested only in receiving compensation for withdrawing from consideration as an applicant.

PSI is additionally concerned that if the pending legislation is adopted, the Commission would also be required to conduct an auction to award the mutually

^{6/} See H.R. 2264, passed by the House of Representatives May 27, 1993, 139 Cong. Rec. H3088; passed by the Senate June 24, 1993, 139 Cong. Rec. S7986.

exclusive applications filed for unused channels. Because the vast preponderance of SMR channels were not awarded through a competitive bidding procedure, the imposition of this mechanism for EMSP licenses (or for any SMR licenses, including 900 MHz systems) would distort the comparative value of systems awarded under the disparate procedures. Accordingly, the Commission is urged to employ whatever mechanism contained in the legislation ultimately adopted to conclude that the imposition of auctions for this unused SMR spectrum would not be appropriate.

C. The Commission's Rules Should Seek to Retain the Essential Characteristics of SMR Services

As noted above, PSI is supportive of the Commission's efforts to reduce the regulatory impediments to the provision of wide area SMR services. Nevertheless, PSI is concerned that the proposed regulatory changes may unintentionally promote the demise of traditional SMR services. The Commission notes that it envisioned that SMR systems would provide primarily dispatch services to eligible users.^{2/} Better dispatch oriented service can be provided if licensees have the ability to offer wide area services and other capabilities that are impeded by current regulations. However, the Commission should not create a regulatory structure based upon the system configuration of entities that have expressed an interest in deviating from a primarily dispatch service concept. The Commission's proposal to authorize the use of 42 vacant channels, for example, is derived from a proposal of the American Mobile Telecommunications Association ("AMTA"), which, in turn, appears to originate from the system configuration of many

^{2/} NPRM at para. 2.

entities, such as Fleet Call, Inc., which intend to market their service to the mobile telephone market. PSI does not challenge, at this late stage, either the market or regulatory wisdom that prompts Fleet Call and others to adopt this approach. However, the FCC's regulations should not follow this service concept. Instead, the rules should continue to be structured to primarily support dispatch systems.

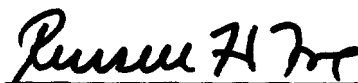
III. CONCLUSIONS

PSI supports the Commission's proposals to promote the use of wide area and advanced technology SMR systems. However, PSI wishes to ensure that the rules adopted for the 800 MHz SMR industry do not further disadvantage 900 MHz SMR providers, who, as the Commission has recognized, have already been handicapped by regulatory impediments. PSI also urges the Commission to revise its licensing mechanism so that entities with substantial capital resources will not be favored over other qualified applicants. Finally, in adopting regulations in this proceeding, the FCC should retain the essential nature of SMR as a dispatch service and not promote a rule structure designed for mobile telephone operations.

WHEREFORE, THE PREMISES CONSIDERED, PowerSpectrum, Inc. hereby submits the foregoing Comments and urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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